

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KEITH A. JONES

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Appeal No. 94-4329  
Application 08/040,346<sup>1</sup>

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ON BRIEF

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Before WINTERS, WILLIAM F. SMITH, and GRON, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 31 through 33 and 35 through 37, all the claims in the application.

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<sup>1</sup> Application for patent filed March 30, 1993. According to appellant, the application is a division of Application 07/907,050, filed July 1, 1992, now Patent No. 5,342,630.

Claim 31 is illustrative of the subject matter on appeal and reads as follows:

31. A pet shampoo formulation which is an aqueous medium having an ingredient content which comprises (1) a salt ingredient selected from C<sub>8</sub>-C<sub>22</sub> fatty acid alkali metal and ammonium salts; (2) an inorganic salt ingredient selected from alkali metal and ammonium bicarbonates; (3) a fragrance ingredient; and (4) at least one compound selected from alkali metal and ammonium carbonates providing a pH in the range of 7.5-12.

The references relied upon by the examiner are:

Steen et al. (Steen)	4,026,825	May 31, 1977
Crammer et al. (Crammer)	5,064,859	Nov. 12, 1991

Claims 31 through 33 and 35 through 37 stand rejected under 35 U.S.C. § 103 as unpatentable over Crammer in view of Steen. We reverse.

In our view, the examiner has misconstrued the portion of the disclosure of Crammer which is most relevant in determining the patentability of the subject matter on appeal. As a result of this error in fact finding, the examiner's subsequent legal conclusion under this section of the statute is flawed.

The claims on appeal are directed to an aqueous composition which includes a salt ingredient selected from C<sub>8</sub>-C<sub>22</sub> fatty acid alkali metal and ammonium salts. Crammer describes aqueous compositions which include C<sub>8</sub>-C<sub>12</sub> fatty acids. As set forth at column 4, lines 26-41, of Crammer:

Other suitable formulations may include shampoos and soaps. Such shampoos may include 10 to 30% active ingredient, ammonium lauryl

sulphate, an alkylene glycol such as for example propylene glycol, an alkaline salt of EDTA such as for example the disodium salt of EDTA, formaldehyde and a 2-halo-2-nitropropane-1,3-diol such as for example 2-bromo-2-nitropropane-1,3-diol. Suitable soaps are the alkali metal salts, alkaline earth metal salts or unsubstituted ammonium salts of one of the active ingredients such as for example capric acid, undecanoic acid, undecenoic acid or trans chrysanthemic acid either individually or a mixture with one of the higher fatty acids such as the sodium or potassium salt of oleic or stearic acid or of fatty acid mixtures which can be obtained e.g., from coconut oil or tallow oil.

Thus, Crammer distinguishes between “shampoos” and “soaps” in that shampoos include the  $C_8$ - $C_{12}$  fatty acid in acid form while soaps contain the  $C_8$ - $C_{12}$  fatty acid in salt form.

The examiner states in the paragraph bridging pages 3-4 of the Examiner's Answer (Paper No. 12, July 11, 1994) that Crammer “discloses shampoo formulations including fatty acid (carboxylic acid) salts such as alkali metal salts or unsubstituted ammonium salts . . . .” This is an erroneous finding of fact. The shampoos of Crammer include  $C_8$ - $C_{12}$  fatty acids, not salts. Thus, it matters not that the examiner has identified portions of Steen describing “shampoos” which can contain bicarbonates and carbonates because any combination of Crammer and Steen on the basis of formulating a “shampoo” would necessarily include a  $C_8$ - $C_{12}$  fatty acid, per the disclosure of Crammer, not the  $C_8$ - $C_{12}$  fatty acid salt required by the claims on appeal. The examiner has not presented a fact-based explanation as to why one of ordinary

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skill in the art would have found it obvious to arrive at the claimed subject matter on the basis of a “soap” composition of Crammer which would include a C<sub>8</sub>-C<sub>12</sub> fatty acid salt.

On this record, we are constrained to reverse the rejection.

The decision of the examiner is reversed.

REVERSED

Sherman D. Winters	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
William F. Smith	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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	)	
Teddy S. Gron	)	
Administrative Patent Judge	)	

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Charles B. Barris  
Church & Dwight Co., Inc.  
469 North Harrison Street  
Princeton, NJ 08543